

**TITLE 16 DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF BEHAVIORAL SCIENCES
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
August 14, 2012
1:00pm-2:00pm

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on August 13, 2012 or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4980.35 and 4980.60 of the Business and Professions Code, and to implement, interpret, or make specific Sections 4980.35, 4980.40, 4980.42, and 4980.43, of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

1. Amend Section 1833 - Experience

Section 1833 sets forth the experience requirements for an applicant seeking LMFT licensure.

Currently, applicants for LMFT licensure are allowed to obtain no more than a total of 250 experience hours toward the licensure experience requirements performing the following activities (California Code of Regulation (CCR) Title 16 Section 1833(a)(4)):

- Administering and evaluating psychological tests of counselees;
- Writing clinical reports;
- Writing progress notes; and
- Writing process notes.

This regulation is now in direct conflict with a recent statutory change. SB 363 (Chapter 384, Statutes of 2011), which became law on January 1, 2012, addressed concerns that MFT interns were being allowed to gain too many client centered advocacy hours. Previously, the law limited the number of hours an MFT intern could obtain for direct supervisor contact,

professional enrichment activities, and client centered advocacy together to 1,250 hours. SB 363 revised the law to allow up to 500 hours of experience in the following areas:

- Administering and evaluating psychological tests;
- Writing clinical reports;
- Writing progress notes;
- Writing process notes; and
- Client centered advocacy.

The Board is proposing an amendment to strike out Section 1833(a)(4), which allows 250 hours of experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes and writing process notes and which is in direct conflict with the new statute that allows up to a total 500 hours of experience in these areas and in client centered advocacy. The new requirement in law is already clearly specified in Section 4980.43(a)(9) of the Business and Professions Code (BPC), and therefore clarification is no longer needed in regulation.

Policy Statement Overview: Adoption of this proposed amendment will increase clarity to both consumers and individuals who are seeking an LMFT license by clarifying the experience needed to obtain a license.

2. Amend Section 1833 – Telephone Counseling

BPC Section 2290.5 defines telehealth as a means of delivering health care services and public health via information and communication technologies. For example, psychotherapy performed via the telephone or over the internet may both be considered telehealth.

Current law limits the number of experience hours that an applicant for licensure as a marriage and family therapist (LMFT) may gain performing services via telehealth as follows:

*Business and Professions Code (BPC) Section 4980.43(a)(11)
Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth in accordance with Section 2290.5.*

However, this statute is in conflict with CCR Title 16, Section 1833(a)(5), which limits an applicant seeking LMFT licensure to count no more than 250 hours of experience gained counseling or crisis counseling on the telephone.

The Board believes that the regulation is outdated, as it only limits counseling via telephone and does not provide for counseling provided over the internet. Therefore, the Board is proposing an amendment to strike out Section 1833(a)(5).

Policy Statement Overview: Adoption of this proposed amendment will increase clarity to both consumers and individuals who are seeking an LMFT license by clarifying the amount of experience for licensure that may be obtained via telehealth.

3. Amend Section 1833 – Errant References

In addition to the changes described above, the Board is also proposing an amendment to correct errant references in Sections 1833 (a) and (c) which have occurred as the statutes have changed over time.

Policy Statement Overview: Adoption of this proposed amendment will increase clarity to both consumers and individuals who are seeking an LMFT license by clarifying regulatory references to statute.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

This regulatory proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Modification and clarification of the content of experience hours required for licensure is not related to the operations of a business.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses:
The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following:

- The proposed regulatory amendment to strike out Section 1833(a)(4) and (5) simply deletes requirements that are in conflict with statute. An increase in the allowable number of experience hours in certain content areas has no effect in the overall total number of hours required for licensure, and would not have an economic impact on businesses because it does not affect their daily operations.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly

to produce goods or services, and that it will not create or eliminate jobs or occupations. This proposal does not impact multiple industries.

Effect on Small Businesses: The Board has determined that the proposed regulations will not affect small businesses for the reasons specified above.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's marriage and family therapist licensees. Health and welfare is increased by doing the following:

- Increasing clarity to both consumers and individuals who are seeking an LMFT license by clarifying the experience needed to obtain a license.

The proposal will have no effect on worker safety or the State's environment.

Occupations/Businesses Impacted: The Board has determined that there will be no economic impact of this proposed regulation.

Reporting Requirements: None.

Comparable Federal Regulations: None.

Benefits: Business and Professions Code Section 4990.16 states the following: "Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The public will benefit from the increased clarity this proposal provides, as described above.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed below (or by accessing the website listed below).

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the Contact Person named below (or by accessing the website listed below).

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Rosanne Helms
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The backup contact person is:

Name: Marc Mason
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WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.